

EXECUTIVE ORDER \_\_\_\_\_

Drafting History and Additional  
Principles of Interpretation

Preamble.

Revised language is intended to make it clear that the revisions contained in Section 2 of Executive Order 12036 were designed to place increased emphasis on the effective conduct of intelligence activities. Thus, the revisions should be given meaning and effect in a way that will improve foreign intelligence collection and dissemination activities, consistent with the protection of constitutional rights and other legal interests.

Section 2-102. Principles of Interpretation.

This section has been revised and expanded to encompass three points. First, Section 2 of the Order as revised is intended to authorize specific activities pursuant to authorities granted to the President under the Constitution and statutes of the United States, and as head of the National Security Council under the National Security Act of 1947. This change is intended to remove any doubt concerning the authority of agencies in the Intelligence Community to conduct specific activities and the need to search for other authority for those activities. Second, the revision is intended to make it clear that Section 2 does not affect or govern other activities not addressed therein of agencies within the Intelligence Community, including law enforcement responsibilities of such agencies. Finally, the revision makes it clear that if collection of information can be either for an intelligence or law enforcement purpose, the procedures that govern the collection activity will be governed by the purpose for which the specific collection is undertaken.

Section 2-201. General Provisions.

Subsection (a) of this section is to ensure that the Attorney General will review all agency procedures promulgated in accordance with sections 2-202 through 2-208 of the Order and express his views, both on the legal sufficiency and the policy aspects of those procedures. While the Attorney General may decide not to approve a proposed agency procedure on either policy or legal grounds, he must provide a statement which sets forth his reasons for doing so. With respect to questions of policy, the language is intended to establish a mechanism to initiate a decisionmaking exercise by the National Security Council if the Attorney General and the agency head cannot agree on any procedure.

Subsection (b) has also been revised to make it clear that the President is delegating to the Attorney General his constitutional authority to approve the use of any technique for which a warrant would be required if undertaken for law enforcement purposes in circumstances in which the Attorney General determines that use of the technique would be lawful under the Constitution and statutes of the United States. The revision thus removes the limitation contained in the previous Order which would limit the use of such techniques to those circumstances in which there is probable cause to believe that the United States person is an agent of a foreign power.

#### Section 2-202. Electronic Surveillance.

This provision makes it clear that CIA may not engage in the United States in electronic surveillance directed against particular individuals on its own initiative. CIA may provide, however, technical assistance to other departments and agencies authorized to engage in electronic surveillance in the United States. Such technical assistance may include provision of equipment and personnel for such purposes as translation assistance, casing in-target, assistance at the listening post, and other similar forms of assistance, provided the disposition of any information to which CIA employees are provided access is processed in accordance with applicable procedures of such other departments or agencies to which assistance is provided. This section also does not preclude CIA electronic surveillance directed abroad at individuals in the United States provided such surveillance is conducted pursuant to the Foreign Intelligence Surveillance Act. Furthermore, the training of CIA personnel in the United States to engage in electronic surveillance activities abroad by CIA or by NSA does not amount to electronic surveillance under the Order when conducted pursuant to procedures established pursuant to section 2-201.

#### Section 2-203: Electronic Optical or Mechanical Monitoring.

This revision is intended to make it clear that separate procedures are required for electronic optical or mechanical monitoring only if such monitoring would require a warrant if undertaken for law enforcement purposes. Any monitoring which would not require a warrant would be governed by procedures for physical surveillance. Any monitoring that amounts to electronic surveillance would be governed by section 2-202.

#### Section 4-202. Counterintelligence.

The definition of counterintelligence has been revised to make it clear that information on any international terrorist activity is encompassed, and not just information about such activities conducted for or on behalf of foreign powers. It is

also made clear that counterintelligence includes information about any intelligence activity on behalf of a foreign power and not just those conducted in a clandestine fashion. Elimination of the word "clandestine" also makes it clear that counterintelligence information is not limited to that obtained through human collection, but may also include information about the activity of foreign intelligence services that is acquired by technical collection activities.

Section 4-212. Special Activities.

The definition of special activities permits the conduct of activities within the United States in support of foreign policy objectives abroad, although the immediate effect of the activity may be on a foreign official or government group within the United States. The definition has been modified to clarify this point and to add certain safeguards. It must be clear that the activity in question is not intended to influence public opinion or governmental policies in the United States. The agency conducting the special activity in the United States should ensure any appropriate notification of the FBI or the department or agency whose activities may be affected.

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